

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**SKYPORT GLOBAL  
COMMUNICATIONS, INC.**

**DEBTOR**

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**CASE NO. 08-36737-H4-11  
(CHAPTER 11)**

**MOTION OF ADVANCED PROJECTS INTERNATIONAL, INC.  
FOR RECONSIDERATION  
OF ORDER APPROVING ENTRY INTO POST PETITION LEASE AGREEMENT  
WITH UPSTREAM INVESTMENTS, LLC (Docket #209) AND OBJECTION TO THE  
JOINT MOTION TO AMEND ORDER APPROVING LEASE  
AND PURCHASE OPTION (Docket #209) UNDER FED. R. CIV. P. 60(A) (Docket#214)**

**IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING, AND YOU MUST RESPOND SPECIFICALLY TO EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY (20) DAYS FROM THE DATE YOU WERE SERVED AND GIVE A COPY TO THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF.**

**IF A PARTY REQUESTS EMERGENCY CONSIDERATION, THE COURT MAY ACT EXPEDITIOUSLY ON THE MATTER. IF THE COURT ALLOWS A SHORTER RESPONSE TIME THAN TWENTY (20) DAYS, YOU MUST RESPOND WITHIN THAT TIME. IF THE COURT SETS AN EMERGENCY HEARING BEFORE THE RESPONSE TIME WILL EXPIRE, ONLY ATTENDANCE AT THE HEARING IS NECESSARY TO PRESERVE YOUR RIGHTS. IF AN EMERGENCY HEARING IS NOT SET, YOU MUST RESPOND BEFORE THE RESPONSE TIME EXPIRES.**

COMES NOW, ADVANCED PROJECTS INTERNATIONAL, INC., (hereinafter "Advanced") and files this its Motion of Advance Projects International, Inc., For Reconsideration of Order Approving Entry Into Post Petition Lease Agreement With Upstream

Investments, LLC (Docket #209) And Objection To The Joint Motion To Amend Order Approving Lease Purchase Option (Docket #209) Under Fed. R. Civ. P. 60(a) (Docket #214) and would respectfully shows the Court as follows:

1. On or about October 24, 2008, the SkyPort Global Communications, Inc., (“Debtor”) filed its voluntary petition for relief under Chapter 11 of Title of the United States Code (the "Bankruptcy Code"), thereby commencing this case. The Debtor is operating its business and managing its properties as Debtor-In-Possession pursuant to § 1107 (a) and § 1108 of the Bankruptcy Code.

2. Advanced Projects International, Inc., is an unsecured creditor in this Estate by virtue of its pre-petition service contract entered into with the Debtor and balance due and owing prior to the filing date. Further, Advanced has an administrative claim for which the Debtor has objected to, but which has not yet been adjudicated by the court.

3. On or about April 20, 2009, the Debtor filed an Emergency Motion For Approval of Entry Into Post Petition Lease Agreement and Purchase Option with Upstream, LLC. (Docket #204) (the “Motion”). Said Motion requested emergency consideration and ultimately the court’s approval of a post petition lease of an asset of the Estate, in particular a i-Direct hub (“Hub”) to Upstream Investments, LLC ( hereinafter known as “Upstream”).

4. On or about April 27, 2009, the court seven (7) days later signed an Order Approving Entry Into Post Petition Lease Agreement With Upstream Investments, LLC. (Docket #209) (See attached Exhibit “A”).

5. On or about May 4, 2009, the Debtor filed a Joint Motion To Amend Order Approving Lease and Purchase Option (Docket #209) Under Fed. R. Civ. P. 60(a). (“Joint Motion”) (Docket #214).

RELIEF REQUESTED

6. Advanced requests that this Court reconsider and/or vacate the Order Approving Entry Into Post Petition Lease Agreement With Upstream Investments, LLC. (Docket #209).

The Court should grant the relief request because:

- a) Pursuant to Federal Rules of Civil Procedure 59, as incorporated Federal Rule of Bankruptcy Procedure 9023, entitled “New Trials; Amendment of Judgement”.
- b) Alternatively, Pursuant to Federal Rules of Civil Procedure 60(b), as incorporated Federal Rules of Bankruptcy Procedure 9024, entitled “Relief from a Judgment or Order”.

ARGUMENTS AND AUTHORITIES.

7. Federal Rules of Civil Procedure 59(e), as incorporated Federal Rule of Bankruptcy Procedure 9023, allows the court to alter or amend a judgment or order so long as said motion is filed within 10 days of the entry of the judgment. Here said order was entered on April 27, 2009 and Advanced is filing this motion the within the 10 days after the entry of the order. Well within the required time frame.

A motion to reconsideration a case or order under Rule 59(e) though subject to much more stringent time limitations than a comparable motion under Rule 60(b), is not controlled by the same exacting substantive requirements. See *In re Berg*, 383 B.R. 631 (Bankr. W.D. Tx. 2008). Rule 59(e), therefore provides the district court with the power to consider equitable factors and provide relief for “any...reason justifying relief from the operation of the judgment. See *In re Berg*, 383 B.R. 631 (Bankr. W.D. Tx. 2008). The 5<sup>th</sup> Circuit has concluded that in order to reconsider and order or case under Rule 59(e) on the basis of evidentiary material that were not timely submitted, the mover need not first show that its default was result of mistake,

inadvertence, surprise or excusable negligent or that the judgment is manifestly wrong.

*Lavespere v. Niagara Machine & Tool Works, Inc.* 910 F.2nd 167 (5<sup>th</sup> Cir. 1990).

8. Within this case, the creditors and the court had no opportunity to here any evidence from Advanced or any other creditors, as to the valuation of the Hub, the relationship of the purchaser to the Debtor and effect on the valuation of the asset upon sale, thereby possibility identifying the Hub as “grey market” by iDirect and thereby lowering the value. Further, the Motion and attached order are in direct conflict as to what exactly the Debtor is requesting to be approved in that the Motion is requesting approval of a post petition lease, but the attached order to the Motion is requesting a sale free and clear of all liens. Therefore, the Court should vacate, the Order Approving Entry Into Post Petition Lease Agreement With Upstream Investments, LLC. (Docket #209) , and deny the Joint Motion (Docket #214) given the lack of unfair prejudice as to the omitted evidence and true intent of the Debtor and Upstream.

9. Additionally, pursuant to Federal Rules of Civil Procedure 60(b), as incorporated Federal Rules of Bankruptcy Procedure 9024, allows the court to relieve a party or its legal representative from final judgment, order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect... (4) the judgment is void... (6) any other reason that justifies relief. The Motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

This motion is timely as it has been made within the 10 day of the entry of the court’s order granting the Motion.

10. For the stated reasons in paragraph eight (8) by Advanced, and hereby adopted

in whole above as said reasons are valid under Federal Rules of Civil Procedure 60(b), as incorporated Federal Rules of Bankruptcy Procedure 9024 to vacate the Order Approving Entry Into Post Petition Lease Agreement With Upstream Investments, LLC. (Docket #209) , and deny the Joint Motion (Docket #214).

WHEREFORE, PREMISES CONSIDERED, Advanced Projects International, Inc., hereby requests the Court to vacate the Order Approving Entry Into Post Petition Lease Agreement With Upstream Investments, LLC. (Docket #209) , and deny the Joint Motion (Docket #214) and prays for such other and further relief, at law and equity to which it may be entitled

Dated: May 7, 2009

Respectfully submitted,

ADAIR & MYERS, PLLC

\_\_\_\_\_/s/ Calvin Braun\_\_\_\_\_  
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ATTORNEY FOR ADVANCED  
PROJECTS INTERNATIONAL, INC.

## Exhibit A



ENTERED  
04/27/2009

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:

SKYPORT GLOBAL  
COMMUNICATIONS, INC.

DEBTOR

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CASE NO. 08-36737-H4-11

CHAPTER 11

**ORDER APPROVING ENTRY INTO POST PETITION  
LEASE AGREEMENT WITH UPSTREAM INVESTMENTS, L.L.C.**

ON consideration of the Emergency Motion for Approval of Entry in Post Petition Lease Agreement and Purchase Option with Upstream Investments, L.L.C. ("Motion") filed by Debtor, SKYPORT GLOBAL COMMUNICATIONS, INC. ("SkyPort or Debtor"), pursuant to 11 U.S.C. §363, the Court has considered the Motion, the Lease agreement and Purchase Option attached thereto, and authorizes the Debtor to enter into the Lease and Purchase Option. The Court further makes the following findings of fact and conclusions of law:

The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

Due notice of the Motion has been provided under the circumstances and it appears that no other or further notice need be provided.

The Court has determined that entry into the Lease and Purchase Option represents a valid exercise of the Debtor's sound business judgment.

The Equipment can be leased and the intellectual property licenses of the Debtor may be retained while the equipment is operated under lease.

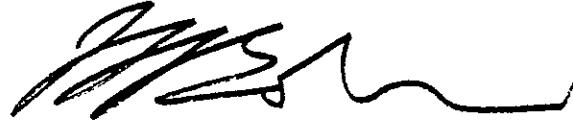
The Court has determined that the relief sought in the Motion is in the best interests of the Debtor's estate and all parties in interest, and that Upstream Investments, LLC will be a good

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faith purchaser as defined by 11 U.S.C. §363(m) if it purchases the equipment after the conclusion of the lease and all lease payments.

Dated:

4/27/2009



UNITED STATES BANKRUPTCY JUDGE



CERTIFICATE OF SERVICE

I hereby certify that on May 7<sup>th</sup>, 2009, a copy of the foregoing Motion was served by first class mail, postage prepaid, and/or ECF Transmission upon the Debtor, Debtor's counsel, and all listed parties on the attached service sheets.

\_\_\_\_\_/s/ Calvin Braun\_\_\_\_\_  
Calvin Braun

MASTER SERVICE LIST  
SkyPort Global Communications; Debtor  
Case # 08-36737-H4-11

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**SKYPORT GLOBAL  
COMMUNICATIONS, INC.**

**DEBTOR**

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**CASE NO. 08-36737-H4-11  
(CHAPTER 11)**

**ORDER**

Came on to be considered the Motion and after having considered the pleadings, papers and records on file in this case, the Court is of the opinion that such Motion should be granted.

It is, therefore,

ORDERED, that the Order Approving Entry Into Post Petition Lease Agreement With Upstream Investments, LLC. (Docket #209) is Vacated, and the Joint Motion (Docket #214) is Denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE